

Case 0:06-mc-00051-JNE-SRN Document 4-4 Filed 06/22/2006 Page 6 of 24

ST PAUL SURETY

Fax: 212 504 0726

Jan 14 3 16:05
Aug 23 2006 8:08P.08
P.08**(APPENDIX D)**

Seaboard Surety Company

SCHEDULE 1**Contractors' General Agreement of Indemnity**

Company	(State of Incorporation)	Address
32 Enthone-OMI, Inc.	Delaware	"
33 Enthone-OMI (Australia) Pty. Ltd.	Victoria, Australia	"
34 Enthone-OMI Holding GmbH	Austria	"
35 Enthone-OMI (Benelux) B.V.	The Netherlands	"
36 Enthone-OMI (Austria) GmbH	"	"
37 Enthone-OMI (France) S.A.	France	"
38 Enthone-OMI Holdings (Deutschland) GmbH	"	"
39 Deutsche Oberflächentechnik GmbH	Germany	"
40 DOT Rechenzentrum GmbH	Germany	"
41 L.P.W. Benelux B.V.	Netherlands	"
42 L.P.W. Chemi GmbH	Germany	"
43 Blasberg Oberflächentechnik GmbH	Germany	"
44 Blasberg GTL Service und Vertriebs GmbH	"	"
45 Blasberg Ynteknik AB	Sweden	"
46 Galvano Production Chemie GmbH	Germany	"
47 L.P.W. France SARL	France	"
48 Riedel Oberflächentechnik GmbH	Germany	"
49 L.P.W. Oberflächentechnik Sp.z o.o.	Poland	"
50 Nihon LPW K.K.	Japan	"
51 Wunsch Chemie GmbH	Germany	"
52 Enthone-OMI (Italia) S.A.R.L.	Italy	"
53 Enthone-OMI Holdings (Europe) S.A.S	France	"
54 Enthone-OMI (Italia) S.A.R.L.	Italy	"
55 Internacional de Manufacturas Asociadas S.A.	Spain	"
56 Imasa A.G.	Switzerland	"
57 Enthone-OMI Holdings (U.K.) Ltd.	United Kingdom	"
58 AMZA Ltd.	Israel	"
59 Enthone-OMI (U.K.) Limited	United Kingdom	"
60 Enthone-OMI (Sverige) A.B.	Sweden	"
61 Enthone-OMI Finance N.V.	Netherlands Antilles	"
62 Enthone-OMI (Canada) Inc.	Ontario, Canada	"
63 IMASA B.V.	The Netherlands	"
64 Enthone-OMI (Hong Kong) Co. Ltd.	Hong Kong	"

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EXHIBIT C

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ST PAUL SURETY

FAX: 415.200.0020

Jan 14 2007 16:05

P.09

APPENDIX DSeaboard Surety CompanySCHEDULE 1Contractors' General Agreement of Indemnity

<u>Company</u>	<u>(State of Incorporation)</u>	<u>Address</u>
63 Enthone-OMI K.K.	Japan	"
66 IMASA Kemi A.B.	Sweden	"
67 Enthone-OMI Holdings (U.K.) Ltd.	United Kingdom	"
68 OMI Holdings S.A.	Switzerland	"
69 Electroplating Engineers of Japan Ltd.	Japan	"
70 Enthone-OMI (Swiss) S.A.	Switzerland	"
71 OMI International Corporation	Delaware	"
72 Enthone-OMI (España) S.A.	Spain	"
73 Enthone-OMI (Europe) Corporation	Delaware	"
74 Enthone-OMI (Hong Kong) Co. Ltd.	Hong Kong	"
75 Hua-Mai Electroplating Technology Company, Ltd.	China	"
76 Enthone-OMI (Singapore) Pte. Ltd.	Singapore	"
77 Enthone-OMI (Malaysia) Sdn. Bhd.	Malaysia	"
78 Federated Metals Canada Limited	Canada	"
79 Federated Metals Corporation	New York	"
80 Geominerals Insurance Company, Ltd.	Bermuda	"
81 Les d'Amiante du Quebec, Ltee	Delaware	"
82 LAQ Canada, Ltd.	Delaware	"
83 Mining Development Company	Delaware	"
84 Empresa Minera Manquiri S.R.L.	Bolivia	"
85 Minto Explorations Ltd.	British Columbia	"
86 Mission Exploration Company	Delaware	"
87 Lenarco, Inc.	Philippines	"
88 NCBP, Inc.	Delaware	"
89 Northern Peru Mining Corporation	Delaware	"
90 Silver Valley Resources Corporation	Delaware	"
91 Southern Peru Copper Corporation	Delaware	"
92 Fomento, S.A.	Peru	"
93 Pegasus Travel, S.A.	Peru	"
94 Logistics Services Incorporated	Delaware	"
95 LSI-Peru, S.A.	Peru	"
96 Multimines Corporation	Delaware	"
97 Multimines Insurance Company, Ltd.	New York	"
98 Recursos e Inversiones Andinas, S.A.	Peru	"

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PAGE.04

EXHIBIT C

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ST PAUL SURETY

2007/07/24

Jan 14 2007 16:05
Aug 23 2007 8:00

P.10
P.05

(APPENDIX)

Seaboard Surety Company

SCHEDULE 1

Contractors' General Agreement of Indemnity

<u>Company</u>	<u>(State of Incorporation)</u>	<u>Address</u>
99 Compania Minera Los Tolmos, S.A.	Peru	"
100 The International Metal Company	New York	"
101 Tullipan Company, Inc.	Delaware	"

Date: Nov 4 1999

By C.F. Schultz
C.F. Schultz, Treasurer

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SI PHIL SURLEY

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Jan 14 2007 15:05
MAY 23 2007 9:05P.11
P.09

ASARCO Incorporated

New York, N.Y., October 19, 1993

I, C. D. Gonzales, an Assistant Secretary of ASARCO Incorporated, a New Jersey corporation, do hereby certify that the following is a full, true and correct copy of Article V, Section 5.01 of the By-Laws of said Company in full force and effect since June 28, 1991 and that there has been no amendment thereof since such date.

Execution of Instruments. All deeds, contracts, and other instruments requiring execution by the Company shall be signed by the Chairman of the Board, the President, the Vice Chairman, an Executive Vice President, a Senior Vice President, a Vice President or the Treasurer, and attested or countersigned by the Controller, Deputy Controller, an Assistant Controller, the Secretary, an Assistant Secretary, or an Assistant Treasurer; provided, however, that authority to sign any deeds, contracts or other instruments requiring execution by the Company may be conferred by the Board upon any person or persons whether or not such person or persons be officers of the Company; and provided, further, that the Chairman of the Board, the President, the Vice Chairman and any Executive Vice President may delegate, from time to time, by instrument in writing, all or any part of such authority to any other person or persons.

I further certify that at the Annual Meeting of the Board of Directors of the Company held on April 28, 1993, Mr. R. de J. Osborne was elected Chairman and President of the Company; Messrs. G. W. Anderson and F. R. McAllister were each elected Executive Vice President; Mr. A. R. Kinsolving was elected Vice President, General Counsel and Secretary; Mr. K. R. Morano was elected Vice President - Finance and Chief Financial Officer; Messrs. R. J. Bothwell, Jr., J. J. Kerr, R. M. Novotny, G. D. Van Voorhis, D. S. Woodbury were each elected Vice President; Mr. M. J. O'Keefe was elected Controller; Messrs. C. M. Sousa and C. P. Schultz were each elected Assistant Treasurer; Mr. S. D. Delaney and Mr. C. D. Gonzales were each elected Assistant Secretary; and Mr. T. J. Findley, Jr. was elected Treasurer, a position he currently holds, and the following is his true and correct signature:


T. J. Findley, Jr.
Treasurer


C. D. Gonzales
Assistant Secretary

(SEAL)

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EXHIBIT C

Jan 14 2006 16:05 P.12

CORPORATE ACKNOWLEDGMENT

<p>STATE OF <u>N.Y.</u> COUNTY OF <u>Westchester</u> On the <u>23</u> day of <u>January</u>, 20<u>06</u>, before me personally came <u>John J. Kunkin, Jr.</u> to me known who, being by me duly sworn, did depose and say that he resides in <u>Westchester</u> that he is the <u>President</u> of <u>ABC Corp.</u> the corporation described in, and which executed the above instrument that he knows the seal of said corporation and that the seal affixed to said instrument is such corporation seal that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by the order of Notary Public, <u>Michael J. Kunkin, Jr.</u> My Commission Expires <u>March 15, 2007</u> STATE OF <u>N.Y.</u> COUNTY OF <u>Westchester</u> On the <u>23</u> day of <u>January</u>, 20<u>06</u>, before me personally came to me known who, being by me duly sworn, did depose and say that he resides in that he is the of the corporation described in, and which executed the above instrument that he knows the seal of said corporation and that the seal affixed to said instrument is such corporation seal that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by the order Notary Public, _____ My Commission Expires _____</p>	<p>STATE OF _____ COUNTY OF _____ On the _____ day of _____, 20____, before me personally came to me known who, being by me duly sworn, did depose and say that resides in that he is the of the corporation described in, and which executed the above instrument that he knows the seal of said corporation and that the seal affixed to said instrument is such corporation seal that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by the order Notary Public, _____ My Commission Expires _____</p>
---	---

INDIVIDUAL ACKNOWLEDGMENT

<p>STATE OF _____ COUNTY OF _____ On the _____ day of _____, 20____, before me personally came to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same. Notary Public, _____ My Commission Expires _____</p>	<p>STATE OF _____ COUNTY OF _____ On the _____ day of _____, 20____, before me personally came to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same. Notary Public, _____ My Commission Expires _____</p>
---	---

PARTNERSHIP ACKNOWLEDGMENT

<p>STATE OF _____ COUNTY OF _____ On the _____ day of _____, 20____, before me personally came to me known and known to me to be a member of the firm at in and who executed the foregoing instrument, and he acknowledged to me that he executed the same as and for the use and benefit of the said firm. Notary Public, _____ My Commission Expires _____</p>	<p>STATE OF _____ COUNTY OF _____ On the _____ day of _____, 20____, before me personally came to me known and known to me to be a member of the said firm, and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same as and for the use and benefit of the said firm. Notary Public, _____ My Commission Expires _____</p>
--	--

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PROZ. 09

EXHIBIT G

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**SQUIRE
SANDERS**
LEGAL
COUNSEL
WORLDWIDE

The following item(s) have been docketed for you based upon the documentation of/for Other received by the Docket Department. Please notify Docket if you have any changes to the items below.

All Listed Professionals	Case Details	Date	Narrative	Authority
George Brandon Thomas Raine Claudia L. Barajas Brian D. Kaiser	62738-00004-0002 (CV06-0134 PHX) Seaboard Surety Company v. <u>Grupo Mexico S.A. de C.V.</u>	6/19/2006 10:00 AM	Custodian of Records St. Paul Fire And Marine Insurance Company to produce documents on 06/19/06 at 10:00 a.m	

EXHIBIT C

Report Prepared: 6/22/2006 5:04 PM

Page: 1

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Re: St. Paul Subpoena

Page 1 of 2

Kaiser, Brian D.

From: Greves, Jason A. [JGreves@faegre.com]
Sent: Friday, June 16, 2006 1:57 PM
To: Kaiser, Brian D.
Subject: RE: St. Paul Subpoena

Brian: I will send you a Rule 45 response today regarding the subpoena. It will come to you via fax and .pdf email. We want to work with you to respond to document requests we believe are within the scope of the Court Order. The fact of the matter is that the documents cannot be produced by Monday. We will propose, in my fax, producing documents within approximately 15 days. Look for my fax and I await your response.

From: Kaiser, Brian D. [mailto:BKaiser@ssd.com]
Sent: Friday, June 16, 2006 2:58 PM
To: Greves, Jason A.
Subject: Re: St. Paul Subpoena

Jason,
Your "attempt to work this out short of Court involvement" was a demand that Grupo Mexico withdraw its subpoena entirely. That doesn't seem to leave much room to "work this out."
We certainly hope that our letter and the exhibits attached thereto leave you with no doubt that St. Paul must timely produce the requested documents. Nonetheless, we leave open the possibility of further discussion in order to answer any questions you may have and to assure you that we remain open to consider any additional facts or arguments you may wish to present to us.
Brian

Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Greves, Jason A. <JGreves@faegre.com>
To: Kaiser, Brian D. <BKaiser@ssd.com>
Sent: Fri Jun 16 13:36:06 2006
Subject: RE: St. Paul Subpoena

Given Grupo's 22 page fax in response to my attempt to work this out short of Court involvement, can you explain why you even offer to discuss this further?

From: Kaiser, Brian D. [mailto:BKaiser@ssd.com]
Sent: Friday, June 16, 2006 12:33 PM
To: Greves, Jason A.
Subject: Re: St. Paul Subpoena

Jason,
As I told you in my telephone message yesterday, I am attending the state bar convention today and have very limited availability. I am disappointed that you have chosen to hold the subpoena for ten days only to raise eleventh hour objections. Nonetheless, I have taken the time to provide you with a detailed response which you should be receiving shortly by facsimile. Feel free to email or call if you would like to discuss this further.
Best,
Brian Kaiser

6/21/2006

EXHIBIT D

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Re: St. Paul Subpoena

Page 2 of 2

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Greves, Jason A. <JGreves@faegre.com>
To: Kaiser, Brian D. <BKaiser@ssd.com>
Sent: Fri Jun 16 11:45:48 2006
Subject: RE: St. Paul Subpoena

Brian: Does your client have a position on this?

From: Greves, Jason A.
Sent: Thursday, June 15, 2006 4:43 PM
To: bkaiser@ssd.com
Subject: St. Paul Subpoena

Brian:

Sorry I missed your call. At your request, we are sending you this email hoping the parties can resolve this discovery dispute short of St. Paul filing a motion to quash the subpoena.

Grupo Mexico is attempting to use Rule 45 to obtain documents from St. Paul as opposed to following the proper procedure of filing a Rule 34 request for production of documents. Pursuant to the complaint, Grupo Mexico has been made aware that Seaboard is wholly owned by St. Paul and thus, St. Paul is a party to this action. Therefore, the conduit for obtaining documents must be Rule 34. While this may appear to be an argument of procedure over substance, in reality, by serving a Rule 45 subpoena Grupo Mexico attempts to shorten the time to answer the discovery from 30 days (as provided by Rule 34) to the 14 days it arbitrarily sets in the subpoena. The attempt to obtain documents through R. 45 subpoena is defective and subject to a motion to quash.

Moreover, we believe the subpoena is overly broad and not limited to the order of the Arizona Court. Namely, while we would concede that Request Number 1 falls within the order of the Court, without more limiting language from Grupo Mexico, we believe the remaining requests are not in accordance with the Court order. To the extent you disagree, we will likely move the Minnesota Court to stay enforcement of the Subpoena subject to a ruling by the Arizona Court on the scope of the discovery requests.

Therefore, we request the following. Given that our motion is due to the Court on Monday, we need to hear from you by Friday morning on these conditions:

- (1) Grupo Mexico must agree to withdraw its R. 45 subpoena and, instead, file upon counsel for Seaboard a R. 34 request for production of documents.
- (2) To the extent that counsel for Grupo Mexico and Seaboard disagree on the scope of the requested documents, the parties must agree to raise the issue with the Arizona Court.

Jason A. Greves
Faegre & Benson
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
(612) 766-6876
Fax: (612) 766-1600
jgreves@faegre.com

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

EXHIBIT D

6/21/2006

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SERIAL BROADCAST REPORT (1)
*****(FRI) JUN 16 2006 19:13
FAEGRE & BENSON

DOCUMENT #	TIME STORED	TIME SENT	DURATION	TOT. DST	PAGES
4864296-034	6.16 19:09	6.16 19:10	2' 36"	2	3

FIN. 2

0002#000010#16022538129#

0002#000010#6126728397#



UNITED STATES | ENGLAND | GERMANY | CHINA

FACSIMILE TRANSMISSION

FROM: Jason A. Greves

TELEPHONE: 612-766-6876

EMAIL: JGreves@faegre.com

DATE: June 16, 2006

TIME: _____ m. (Minneapolis)

NUMBER OF PAGES (including this page): 3

F&B FILE: 000190 REC: 0002

TO: Brian Kaiser
Squire

TELEPHONE:

FAX: 602-253-8129

Wayne S. Moskowitz Esq.
Maslon Edelman Borman & Brand LLP

TELEPHONE: (612) 672-8200

FAX: (612) 672-8397

MESSAGE

EXHIBIT E

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UNITED STATES | ENGLAND | GERMANY | CHINA

JASON A. GREVES
JGreves@faegre.com
(612) 766-6876

June 16, 2006

Brian D. Kaiser
Squire Sanders & Dempsey L.L.P.
Two Renaissance Square
40 North Central Avenue, Suite 2700
Phoenix, AZ 85004-4498

Email and Facsimile
(602) 528-4090

Wayne S. Moskowitz Esq.
Maslon Edelman Borman & Brand LLP
90 S Seventh Street, Suite 3300
Minneapolis, MN 55402

Facsimile
(612) 672-8397

Re: Rule 45 Objection to the Subpoena Duces Tecum to St. Paul Fire & Marine Insurance Co.

Dear Mr. Kaiser and Mr. Moskowitz:

Please note that Faegre & Benson, LLP, is local counsel for St. Paul Fire & Marine Insurance Co. ("St. Paul") and its subsidiary Seaboard Surety Company ("Seaboard") in regards to the Subpoena in a Civil Case (the "Subpoena") served by Grupo Mexico, SA de CV ("Grupo Mexico") in the lawsuit titled Seaboard Surety Company v. Grupo Mexico, SA de CV venued in the United States District Court for the District of Arizona. The Subpoena was served upon St. Paul on June 5, 2006, and demands production of five sets of documents by June 19 at 10 a.m. This letter is in response to your correspondence of this date. Please note that documents will not be produced at Maslon Edelman Borman & Brand LLP on Monday, June 19 for reasons as follows:

1. Lead Counsel for Seaboard advises us that the requests by Grupo Mexico are beyond the scope of discovery authorized by the Court Order of the United States District Court for the District of Arizona dated May 12, 2006 (the "Court Order"). It appears to St. Paul that the Subpoena is not limited to documents regarding the jurisdictional issues addressed in the Court Order.
2. On information and belief, any such documents requested of St. Paul reside in the files of Seaboard, the surety that issued the bonds in question. St. Paul understands that Grupo Mexico has served a Rule 34 Request for Production (Directed Solely to the Issues of

2200 WELLS FARGO CENTER | 90 SOUTH SEVENTH STREET | MINNEAPOLIS MINNESOTA 55402-3901

TELEPHONE 612-766-7000 | FACSIMILE 612-766-1800 | WWW.FAEGRE.COM EXHIBIT E

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June 16, 2006
Page 2

Jurisdiction) upon Seaboard for the same documents subpoenaed from St. Paul, and that Seaboard is not obligated to respond to those requests until July 3, 2006.

3. Pursuant to Rule 45(c) of the Federal Rules of Civil Procedure, St. Paul hereby formally objects to the Subpoena as overly broad, vague and unnecessarily burdensome for failing to allow a reasonable time for compliance. St. Paul is unable to collect and produce requested documents, if any exist, within the fourteen day deadline created by Grupo Mexico. St. Paul is endeavoring to locate files, if any exist, of employees and former employees responsive to the Subpoena. These documents, if any exist, may be spread over several offices in several different states. The documents must then be sent to counsel for a privilege and work product review before production to Grupo Mexico. Fourteen days is an insufficient amount of time to complete this process.

St. Paul, however, is willing to produce any documents that may be responsive to the Subpoena, and within the scope of the Court Order, to Grupo Mexico at the same time that Seaboard is obligated to produce its documents pursuant to Grupo Mexico's Rule 34 Request. St. Paul's production of documents will be those documents, if any exist in the possession of St. Paul, within the scope of the Subpoena and within scope of the Court Order.

We await your response and hope you are willing to accommodate our request to produce documents on July 3.

Very truly yours,

FAEGRE & BENSON LLP

Jason A. Greves

GREJA

cc: Philip L. Bruner
Kara A. Ricupero
M2:2080+986.01

EXHIBIT E

Case 0:06-mc-00051-JNE-SRN Document 4-4 Filed 06/22/2006 Page 17 of 24



UNITED STATES | ENGLAND | GERMANY | CHINA

JASON A. GREVES
jgreves@faegre.com
(612) 766-6876

June 21, 2006

Brian D. Kaiser
Squire Sanders & Dempsey L.L.P.
Two Renaissance Square
40 North Central Avenue, Suite 2700
Phoenix, AZ 85004-4498

Email and Facsimile
(602) 528-4090

Re: Rule 45 Objection to the Subpoena Duces Tecum to St. Paul Fire & Marine Insurance Co.

Dear Mr. Kaiser:

We are in receipt of your fax dated June 20, 2006. St. Paul is in the process of searching for documents in its possession responsive to the subpoena and in accordance with St. Paul's noted objections to the subpoena. To date, no such documents have been located, but our client is continuing its search. It may very well be that all documents responsive to the St. Paul subpoena are possessed by Seaboard. Seaboard is the company that issued the applicable bonds and is the company that likely possesses the documents responsive to the subpoena. If such is the case, we will inform you that St. Paul possesses no documents responsive to the subpoena. In the mean time, as it relates to your demand that documents be produced to you on Friday, we currently have no such documents to produce. We will gladly send to your attention any documents possessed by St. Paul and responsive to the subpoena, if any, as we receive and review them at this firm. We are willing to produce documents in this piecemeal fashion on the understanding that the St. Paul document production, if any, would be fully completed by July 3.

Please, note that our continuing objections to the requests are based, *inter alia*, upon the short time allotted by Grupo Mexico for St. Paul to undertake its search for the documents, and upon Grupo Mexico's overly broad and vague requests for "all" documents "concerning" the reclamation bonds and "all" documents "concerning" the GIA. St. Paul also continues to object to any search that requires burdensome, time consuming and costly searches of electronically stored documents. We request that, before Grupo Mexico starts threatening a Motion to Compel, it permit St. Paul to complete its review to determine if it even possesses any documents related to the subpoena.

2200 WELLS FARGO CENTER | 90 SOUTH SEVENTH STREET | MINNEAPOLIS MINNESOTA 55402-3901
TELEPHONE 612-766-7000 | FACSIMILE 612-766-1600 | WWW.FAEGRE.COM

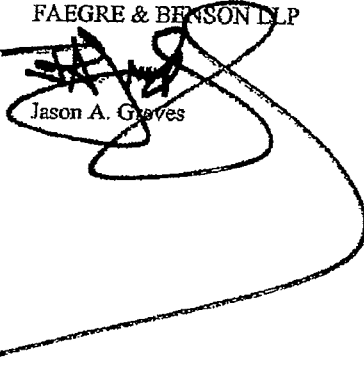
EXHIBIT F

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Brian D. Kaiser
June 21, 2006
Page 2

Very truly yours,

FAEGRE & BENSON LLP


Jason A. Graves

GREJA

cc: Philip L. Bruner
Kara A. Ricupero
MZL20806083.01

EXHIBIT F

Case 0:06-mc-00051-JNE-SRN Document 4-4 Filed 06/22/2006 Page 19 of 24



UNITED STATES | ENGLAND | GERMANY | CHINA

FACSIMILE TRANSMISSION

FROM: Jason A. Greves	TELEPHONE: 612-766-6876
	EMAIL: JGreves@faegre.com
DATE: June 21, 2006	TIME: _____m. (Minneapolis)
NUMBER OF PAGES (including this page): 3	F&B FILE: 337318 REC: 0002
TO: Brian D. Kaiser Squire Sanders & Dempsey, LLP	TELEPHONE: FAX: 602-528-4090

MESSAGE

**IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL THE FAX CENTER AT 612-766-1650
OR MEGAN FROELKE AT 612-766-8948.**

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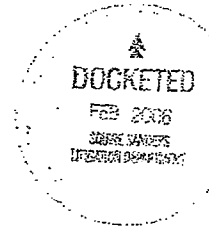
2200 WELLS FARGO CENTER | 90 SOUTH SEVENTH STREET | MINNEAPOLIS MINNESOTA 55402-3901

TELEPHONE 612-766-7800 | FACSIMILE 612-766-1600 | WWW.FAEGRE.COM

EXHIBIT F

David W. Kash - 013571
dkash@jsslaw.com
Matthew L. Cates - 019700
mcates@jsslaw.com
JENNINGS, STROUSS & SALMON, P.L.C.
A Professional Limited Liability Company
The Collier Center, 11th Floor
201 East Washington Street
Phoenix, Arizona 85004-2385
Telephone: (602) 262-5911

Attorneys for Plaintiff



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

SEABOARD SURETY COMPANY, a
New York corporation,

Plaintiff

vs.

GRUPO MEXICO, S.A. de C.V., a
Mexican corporation, and DOES I-CI,

Defendants

No. CV06-0134 PHX-SMM

**PLAINTIFF'S MOTION FOR
EXTENSION OF TIME TO
RESPOND TO DEFENDANT'S
MOTION TO DISMISS AND
MOTION TO PERMIT
JURISDICTIONAL DISCOVERY**

(Oral Argument Requested)

Plaintiff Seaboard Surety Company ("Seaboard Surety"), by and through counsel undersigned, hereby moves the Court for an order granting Seaboard Surety a minimum of ninety days to conduct discovery on the issue of personal jurisdiction and to respond to Defendant's Motion to Dismiss for Lack of Personal Jurisdiction. This Motion is supported by the attached Memorandum of Points and Authorities and the entire record herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL BACKGROUND

This case arises out of the issuance of a guaranty by Defendant Grupo Mexico, S.A. de C.V. ("Grupo Mexico") for the benefit of Plaintiff Seaboard Surety whereby Grupo Mexico agreed to guarantee the indemnity obligations of its Arizona based

1252762_1.DOC(54548.11)

EXHIBIT G

1 subsidiary, ASARCO, Incorporated ("ASARCO") for three reclamation bonds.
2 Seaboard Surety issued the reclamation bonds in the amounts of \$7 million, \$3.5
3 million and \$760,000, naming ASARCO as principal, and the U.S. Department of
4 Interior, Bureau of Indian Affairs as obligee, expressly conditioned upon ASARCO's
5 compliance with its obligations relating to the restoration of trust lands it leased on the
6 Tohono O'odham Reservation in Arizona for its mining operations. Importantly,
7 Seaboard Surety agreed to provide the reclamation bonds conditioned upon and in
8 complete reliance upon Grupo Mexico's guarantee of ASARCO's bonded obligations
9 - obligations that arise in Arizona, involve Grupo Mexico's Arizona subsidiary with
10 which Grupo Mexico has a direct financial interest, and that relate to mining
11 operations conducted upon federal trust lands in Arizona.¹ The effect of the guaranty
12 is that Grupo Mexico purposefully transacted business in and caused important
13 economic consequences to occur in Arizona.

14 ASARCO has defaulted on its bonded obligations and defaulted under its
15 agreement to indemnify Seaboard Surety. Grupo Mexico now refuses to guarantee
16 ASARCO's indemnity obligations to Seaboard Surety.

17 On October 13, 2005, Seaboard Surety filed the instant action in Maricopa
18 County Superior Court against Grupo Mexico for breach of contract and for specific
19 performance or *quia timet* for its failure to honor its obligations to Seaboard Surety
20 under the guaranty. Grupo Mexico removed this action to federal court and on
21 January 11, 2005, filed a motion to dismiss for lack of personal jurisdiction. Counsel
22 undersigned requested an extension of time to file a response so that jurisdictional
23 discovery could be conducted. Grupo Mexico refused.

24
25
26 ¹ The necessity of the guaranty now becomes crystal clear with ASARCO's recent filing of bankruptcy

1 **II. ARGUMENT**

2 Courts are afforded broad discretion in deciding whether to allow parties to
3 conduct discovery relating to jurisdictional issues while a motion to dismiss is
4 pending. *Data Disc, Inc. v. Systems Tech. Assocs., Inc.*, 557 P.2d 1280, 1285 (9th Cir.
5 1977). Courts within the Ninth Circuit have held that the plaintiff need not establish a
6 prima facie case of personal jurisdiction prior to conducting discovery related to
7 jurisdictional issues. *See Orchid Biosciences, Inc. v. St. Louis University*, 198 F.R.D.
8 670, 673 (S.D. Cal. 2001); *Marshall v. McCown Deleeuw & Co.*, 391 F.Supp.2d 880,
9 883 (D. Idaho 2005). Discovery is unnecessary "when it is clear that further discovery
10 would not demonstrate facts sufficient to constitute a basis for jurisdiction." *Wells*
11 *Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 430, n. 24 (9th Cir. 1977).
12 However, discovery should be allowed "where pertinent facts bearing on the question
13 of jurisdiction are controverted . . . or where a more satisfactory showing of the facts is
14 necessary." *Id.* This is precisely such a case.

15 Seaboard Surety in its Complaint alleges the existence of general personal
16 jurisdiction on the grounds that Grupo Mexico conducts business in Arizona through
17 its own actions and that of ASARCO. *See* Complaint, at ¶10. Seaboard Surety alleges
18 that Grupo Mexico's officers and/or agents reside and/or conduct business on behalf of
19 Grupo Mexico in Arizona, including its President of Finance and Administration,
20 Daniel Tellechea Salido. *Id.* at ¶11. Seaboard Surety also alleges, based upon
21 information and belief, that Grupo Mexico advertised and operated business out of
22 facilities located in Arizona, including facilities owned and operated with the name
23 ASARCO. *Id.* at ¶12. And, Seaboard Surety alleges that ASARCO's presence in and
24 contacts with Arizona may be attributed to Grupo Mexico under a theory of alter ego.
25 *Id.* at ¶¶16-20. Seaboard Surety alleges that Grupo Mexico exercises substantially
26 total control over ASARCO's internal affairs, daily operations and management.

1 activities; the entities share corporate officers and top-level management; they share
2 similar logos and offices; and ASARCO maintains liability insurance policies three
3 which are purchased by Grupo Mexico. *Id.* Seaboard Surety should be permitted to
4 take discovery and further develop these grounds for personal jurisdiction.

5 In its Motion to Dismiss, Grupo Mexico attached the affidavit of its general
6 counsel, Armando Ortego. Mr. Ortego rebuts many of Seaboard Surety's
7 jurisdictional allegations and denies the existence of any contacts between Grupo
8 Mexico and Arizona. The analysis, however, does not end there. Rather, courts
9 generally allow jurisdictional discovery under such circumstances where the facts
10 bearing on the question of jurisdiction are in dispute. *America West Airlines, Inc. v.*
11 *GPA Group, Ltd.*, 877 F.2d 793, 801 (9th Cir. 1989). Seaboard Surety seeks to
12 conduct discovery on issues bearing on general jurisdiction, such as whether Grupo
13 Mexico maintains offices and bank accounts in Arizona, whether it has officers and
14 employees within the state, whether it conducts meetings with corporate personnel in
15 Arizona, whether it advertises in Arizona, and whether it conducts negotiations and
16 enters into contracts in Arizona. Seaboard Surety seeks to obtain documents relevant
17 to these issues and take the depositions of Mr. Ortego, Mr. Salido and potentially other
18 Grupo Mexico employees who may have knowledge regarding Grupo Mexico's
19 contacts with Arizona and the corporate separateness (or lack thereof) between Grupo
20 Mexico and ASARCO.

21 In addition to the assertion of general jurisdiction, Seaboard Surety alleges
22 specific jurisdiction based upon Grupo Mexico's execution of the guaranty for the
23 obligations of ASARCO. See Complaint, at ¶¶5-9. Grupo Mexico executed the
24 guaranty with a direct financial stake and economic interest in the issuance of the
25 reclamation bonds in furtherance of the mining business of its subsidiary in Arizona.
26 *Id.* As such, Grupo Mexico's guaranty played an integral part in and caused economic

1 consequences in Arizona. *Id.* While Plaintiff believes that the execution of the
2 guaranty, alone, is sufficient to confer personal jurisdiction over Grupo Mexico, out of
3 an abundance of caution, Plaintiff seeks leave to conduct discovery on the issues
4 surrounding the guaranty, including the location of negotiations leading up to the
5 guaranty, the persons involved, and ASARCO's involvement in its execution, if any.

6 Discovery on the issues related to personal jurisdiction is strongly favored
7 under the law, will not prejudice Grupo Mexico and will assist the Court in its
8 determination of whether it has personal jurisdiction over Grupo Mexico. For these
9 reasons, Plaintiff respectfully requests a minimum of ninety days to conduct discovery
10 on the jurisdictional issues and to respond to Grupo Mexico's Motion to Dismiss.

11 Dated this 31st day of January, 2006.

12 JENNINGS, STROUSS & SALMON, P.L.C.
13

14 By s/Matthew L. Cates
15 David W. Kash
16 Matthew L. Cates
17 201 East Washington Street, 11th Floor
Phoenix, Arizona 85004-2385
Attorneys for Plaintiff

18 I hereby certify that on January 31, 2006, I
19 electronically transmitted this Motion For
20 Extension of Time to the Clerk's Office using
21 the CM/ECF System for filing and transmittal
of a Notice of Electronic Filing to the following
CM/ECF registrants:

22 George Brandon
23 Mitchel B. Axler
24 Brian D. Kaiser
25 Squire, Sanders & Dempsey, LLP
40 North Central Avenue, Suite 2700
Phoenix, AZ 85004-4498
Attorneys for Defendant Grupo Mexico S.A. de C.V.

26 By Debra Villa

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JNE/SRN

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

7

8

Seaboard Surety Company, a New York
corporation,

NO. CIV-06-0134-PHX-SMM

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Plaintiff,

ORDER

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v.

12

Grupo Mexico, S.A. de C.V., a Mexican
corporation, and DOES I-CI,

13

Defendants.

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Pending before the Court is Defendant Grupo Mexico, S.A. de C.V.'s ("Grupo Mexico") Motion to Dismiss for Lack of Personal Jurisdiction (dks. 9-10) and Seaboard Surety Company's ("Seaboard") Motion for Extension of Time to Respond to Defendant Grupo Mexico's Motion to Dismiss and Motion to Permit Jurisdictional Discovery. (Dkt. 12.) After considering the parties' briefs, the Court issues this Order.

BACKGROUND

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Seaboard, a wholly-owned subsidiary of The St. Paul Fire and Marine Insurance Company ("St. Paul"), is a New York corporation with its principal place of business in Minnesota. (Dkt. 1, Amd.Comp. ¶ 1.) Grupo Mexico, a Mexican corporation and Mexico's largest mining company, has its principal place of business in Mexico City. (Dkts. 10 at 5, 14, Ex.C at 1.) ASARCO LLC ("ASARCO") is an indirect wholly-owned

SCANNED

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EXHIBIT H-5

U.S. DISTRICT COURT MPLS

1 subsidiary of Grupo Mexico that operates an integrated copper-mining, smelting, and
2 refining company in Tucson, Arizona. (Dkt. 14, Ex. H at 2.)

3 Seaboard filed the present case against ASARCO and Grupo Mexico in
4 Arizona state court on July 28, 2005, asserting claims for (i) Reimbursement pursuant to a
5 General Agreement of Indemnity entered into with ASARCO (the "GAI"); (ii) Indemnity
6 pursuant to the GAI; and (iii) Specific Performance of the GAI's provision requiring
7 financial statements from ASARCO. (Dkt. 1 at Initial Complaint.) Less than two weeks
8 later, ASARCO filed a Chapter 11 bankruptcy petition in the United States Bankruptcy
9 Court for the Southern District of Texas. (Dkt. 10 at 2.)

10 On October 13, 2005, Seaboard filed an amended complaint in state court,
11 eliminating ASARCO, and asserting claims for breach of contract and specific performance
12 against Grupo Mexico and "Does I-CI" based on the same factual allegations asserted in the
13 initial complaint. (Dkt. 1, Amd. Compl.) On January 6, 2006, Grupo Mexico removed this
14 action from state court to federal court. (Dkt. 1.)

15 Both Seaboard and Grupo Mexico agree that, on February 16, 2001, Grupo
16 Mexico signed a letter agreement in Mexico City, whereby it agreed to "indemnify St. Paul
17 Surety on behalf of ASARCO Incorporated for . . . three Mission reclamation bonds issued
18 to the USA, Department of the Interior, Bureau of Indian Affairs in the amounts of \$7.0
19 million, \$760,000, and \$3.5 million, respectively" (the "Letter Agreement") (Dkts. 1, Amd.
20 Complt. ¶5; 10 at 3.) The parties also agree that, after the Letter Agreement was signed,
21 Grupo Mexico sent it via facsimile from Mexico City to St. Paul Surety in New York. (Dkt.
22 10, Ex. A at ¶19.) Seaboard alleges that, through the Letter Agreement, Grupo Mexico
23 "guaranteed ASARCO's performance of its indemnity obligations owing under" the GAI.
24 (Dkt. 1, Amd.Compl. ¶46.) Grupo Mexico contends Seaboard has not alleged any
25 judgment entered against it stemming from the Mission Reclamation Bonds or the GAI, and
26 thus Grupo Mexico's duty to "make good the loss resulting from such debt" has not yet

1 arisen. (Dkt. 10 at 4-5.)

2 On January 11, 2006, after removing the case to this Court, Grupo Mexico
3 filed a motion to dismiss for lack of personal jurisdiction. (Dkts. 9-10.) In support of its
4 motion, Grupo Mexico submitted the affidavit of Armando Ortega, General Counsel of
5 Grupo Mexico, which purports to identify Grupo Mexico's lack of contacts with the state
6 of Arizona. In addition, Grupo Mexico submitted a consent decree resolving an
7 environmental enforcement action brought by the Department of Justice against ASARCO
8 in United States v. ASARCO, Inc., et al., No. CV-02-2079-PHX-RCB, filed in this Court
9 in February 2003 (the "Consent Decree"). (Dkt. 10, Ex. B.) Although Grupo Mexico is a
10 signatory to the Consent Decree and bound to certain obligations (see id. at 6, ¶3), Grupo
11 Mexico contends the Consent Decree does not provide general jurisdiction because Grupo
12 Mexico never consented "to general jurisdiction in the State of Arizona for any and all
13 claims unrelated to" the Consent Decree. (Dkt. 10 at 8.)

14 On January 31, 2006, Seaboard filed a Motion for Extension of Time to
15 Respond to Defendant's Motion to Dismiss and a Motion to Permit Jurisdictional
16 Discovery. (Dkt. 12.) Seaboard requests "a minimum of ninety days to conduct discovery
17 on the issue of personal jurisdiction and to respond to" Grupo Mexico's Motion to Dismiss
18 for Lack of Personal Jurisdiction. (Dkt. 12 at 1.) Seaboard alleges specific jurisdiction
19 exists based upon Grupo Mexico's execution of the Letter Agreement, which "caused
20 important economic consequences to occur in Arizona." (Id. at 2; dkt. 1, Amd.Comp. ¶¶5-
21 9.) Seaboard further alleges that general jurisdiction exists (i) "on the grounds that Grupo
22 Mexico conducts business in Arizona through its own actions and that of ASARCO" (dkt.
23 1, AmdComp. ¶¶10-12), and (ii) because "ASARCO's presence in and contacts with
24 Arizona may be attributed to Grupo Mexico under a theory of alter ego." (Id. ¶¶16-20; dkt.
25 12 at 3.) Seaboard contends "it should be permitted to take discovery and further develop
26 these grounds for personal jurisdiction." (Dkt. 12 at 4.)

1 **DISCUSSION**

2 It is well-settled that "[a] court may permit discovery to aid in determining
3 whether it has in personam jurisdiction." Data Disc. Inc. v. Systems Technology Assocs.,
4 Inc., 557 F.2d 1280, 1285 n.1 (9th Cir. 1977). Courts are afforded a substantial amount of
5 latitude in deciding whether to allow parties to conduct jurisdictional discovery while a
6 motion to dismiss is pending. Id. It is also clear that, where pertinent facts bearing on the
7 question of jurisdiction are in dispute, discovery should be allowed." America West
8 Airlines, Inc. v. GPA Group, Ltd., 877 F.2d 793, 801 (9th Cir. 1989) (citations omitted),
9 overruled in part on other grounds by, Republic of Argentina v. Weltover, Inc., 504 U.S.
10 607, 617-20 (1992); see also Wells Fargo & Co. v. Wells Fargo Express Co., 556 F.2d 406,
11 430 n.24 (9th Cir. 1977) (finding that "[d]iscovery . . . 'should be granted where pertinent
12 facts bearing on the question of jurisdiction are controverted . . . or where a more
13 satisfactory showing of the facts is necessary.'" (citation omitted). The rationale for this
14 rule is that the plaintiff may be unable to ascertain the extent of the defendant's contacts
15 with the forum state, particularly when that defendant is a corporation, unless some
16 discovery is permitted.

17 Having reviewed the parties' briefs, the Amended Complaint, the evidence
18 attached to Seaboard's reply (dkt. 14), and Grupo Mexico's opposition (dkt. 13), the Court
19 concludes that it is appropriate to allow Seaboard to conduct jurisdictional discovery in this
20 matter. Seaboard has demonstrated that Grupo Mexico may have sufficient contacts with
21 the State of Arizona to establish general jurisdiction. Seaboard has also shown that the
22 relationship between ASARCO and Grupo Mexico may be closer than simply a grandparent
23 corporation's relationship to a subsidiary, but the record is not sufficiently clear as to
24 whether any such connections will demonstrate alter ego status sufficient to warrant
25 exercising personal jurisdiction.

26 ///

1 Grupo Mexico argues that, before obtaining even limited discovery, Seaboard
2 must establish a prima facie case of personal jurisdiction, which it has failed to do. (Dkt. 13
3 at 4-5.)¹ Although some courts require that a plaintiff make a prima facie showing of
4 jurisdiction prior to a court allowing a party to conduct discovery, the Ninth Circuit does
5 not. See Orchid Biosciences, Inc. v. St. Louis University, 198 F.R.D. 670, 673 (S.D. Cal.
6 2001) (finding no authority from the Ninth Circuit to support the proposition that plaintiff
7 must establish a prima facie case of personal jurisdiction before obtaining jurisdictional
8 discovery); Marshall v. McCown Deleeuw & Co., 391 F.Supp.2d 880, 882-83 (D. Idaho
9 2005) (same); National Union Fire Insurance Co. of Pittsburgh, Pa. v. Aerohawk Aviation,
10 Inc., 259 F.Supp.2d 1096, 1106 (D.Idaho 2003) (same).

11 Moreover, in the Ninth Circuit, “[w]hen a district court acts on a defendant’s
12 motion to dismiss . . . without holding an evidentiary hearing, the plaintiff need make only
13 a prima facie showing of jurisdictional facts to withstand the motion to dismiss.” Ballard
14 v. Savage, 65 F.3d 1495, 1498 (9th Cir. 1995) (citations omitted). It would “therefore be
15 counterintuitive to require a plaintiff, prior to conducting discovery, to meet the same
16 burden that would be required in order to defeat a motion to dismiss.” Orchid Biosciences,
17 Inc., 198 F.R.D. at 673 (emphasis in original). Thus, Seaboard is not required to establish
18 a prima facie case of personal jurisdiction before conducting jurisdictional discovery.

19 The Court also disagrees with Grupo Mexico’s assertion that Mr. Ortega’s
20 affidavit, which denies the existence of any contacts with the State of Arizona, proves that
21 “further discovery would not demonstrate facts sufficient to establish personal jurisdiction.”
22 (Dkt. 13 at 2-4.)

23 ///

24 ¹ The Court notes that Grupo Mexico has filed as a “specially appearing defendant. (Dkt. 13 at 1.)
25 However, the Federal Rules of Civil Procedure abolished the technical distinction between general and special
26 appearances. See SEC v. Wencke, 783 F.2d 829, 832 n. 3 (9th Cir. 1986). Now, in all federal courts, including
those exercising diversity jurisdiction, the principal method for attacking the court’s jurisdiction over the person of
a defendant is Rule 12(b)(2).

1 Ample evidence demonstrates that pertinent facts bearing on the question of
2 jurisdiction are controverted here and a more satisfactory showing of such facts is necessary
3 in order for the Court to rule on Grupo Mexico's Motion to Dismiss for Lack of Personal
4 Jurisdiction. Specifically, Seaboard disputes Mr. Ortega's testimony that (i) "Grupo
5 Mexico does not maintain an office or . . . any other facilities in Arizona," (ii) "Grupo
6 Mexico has no agents, sales representatives, or any employees whatsoever in Arizona," (iii)
7 "Grupo Mexico does no direct advertising in Arizona," and (iv) "Grupo Mexico has never
8 purposefully directed any of its activities towards or consummated any transaction in
9 Arizona and has never purposefully availed itself of any of the benefits or protections of
10 Arizona laws" (Dkt. 10, Ex. A ¶¶8,10-11,13.) See Dkts. 1, AmdComp. ¶¶ 11-12; 14 at 3-4.
11 Under Ninth Circuit jurisprudence, discovery should be denied only where "it is clear that
12 further discovery would not demonstrate facts sufficient to constitute a basis for [personal]
13 jurisdiction." Wells Fargo & Co., 556 F.2d at 430 n.24. The Court is not persuaded that
14 jurisdictional discovery would not reveal additional facts not contained in Mr. Ortega's
15 affidavit that may be sufficient to constitute a basis for personal jurisdiction.

16 Moreover, contrary to Grupo Mexico's contention, the decisions upon which
17 Seaboard relies are not distinguishable from the facts here. (Dkt. 13 at 4-6.) Mr. Ortega's
18 affidavit does not contend Grupo Mexico has no contacts with Arizona. Rather, Mr. Ortega
19 admits that Grupo Mexico is "the corporate grandparent of ASARCO," and that Grupo
20 Mexico signed a Letter Agreement on behalf of ASARCO in February 2001. (Dkt. 10, Ex.
21 A ¶¶16, 19.) As noted in Orchid Biosciences, there is a "fundamental difference between
22 a declaration or affidavit that attests to a defendant's lack of contacts with the forum state
23 and one that admits contacts but concludes they do not matter." 198 F.R.D. at 674. Based
24 on Arizona law providing that the execution of an apparent guarantee letter which defendant
25 knew was going to be used in a transaction in Arizona provided sufficient minimal contact
26 for the state to exercise in personam jurisdiction, see Hamada v. Valley National Bank, 555

1 P.2d 1121, 1124 (Ariz. App. 1976), the Court rejects Grupo Mexico's assertion that
2 "plaintiff can point to no specific contact of Grupo Mexico with the State of Arizona."
3 (Dkt. 13 at 5.) Moreover, Seaboard should not be bound solely by the contents of Mr.
4 Ortega's affidavit or by Grupo Mexico's conclusions that any contacts with Arizona are
5 insufficient to establish personal jurisdiction. Rather, because "pertinent facts bearing on
6 the question of jurisdiction are controverted" and "a more satisfactory showing of the facts
7 is necessary" for this Court to rule on Grupo Mexico's Motion to Dismiss, Seaboard should
8 be permitted to explore the nature of Grupo Mexico's contacts with the State of Arizona and
9 proffer its own arguments regarding personal jurisdiction.

10 Relying on a decision from the Second Circuit Court of Appeals, Jazini v.
11 Nissan Motor Co., Ltd., 148 F.3d 181 (2d Cir. 1998), Grupo Mexico argues that
12 jurisdictional discovery should be denied because Seaboard's alter ego theory is "devoid
13 of a factual basis." (Dkt. 13 at 6-7.) Once again, Grupo Mexico relies on the wrong legal
14 standard necessary to obtain jurisdictional discovery. Jazini denied jurisdictional discovery
15 to the plaintiffs because they failed to establish a prima facie case of jurisdiction. Jazini,
16 148 F.3d at 186. The Ninth Circuit's standard for permitting jurisdictional discovery, by
17 contrast, is quite liberal, and the Court finds that even though Seaboard has not made out
18 a prima facie case of jurisdiction as required by other jurisdictions, see supra at 4-5,
19 Seaboard is entitled to jurisdictional discovery.

20 Moreover, the plaintiffs in Jazini sued a Japanese automobile corporation in
21 New York alleging carelessness and negligence in the design, manufacture, and testing of
22 an automobile part, based on injuries they sustained in a car accident in Iran. 148 F.3d at
23 183. The district court in Jazini referred to the plaintiffs' allegations as "sparse," and the
24 Court of Appeals referred to plaintiffs' "conclusory non-fact-specific jurisdictional
25 allegations." Id. at 183, 185. In the instant case, by contrast, Seaboard's jurisdictional
26 allegations are neither sparse nor insufficiently specific; they are simply insufficiently

1 developed at this point in time to permit judgment as to whether personal jurisdiction over
2 Grupo Mexico is appropriate. See Harris Rutsky & Co. Ins. Services, Inc. v. Bell &
3 Clements Ltd., 328 F.3d 1122, 1135 (9th Cir.2003) (remanding to district court because
4 insufficient record facts to decide whether alter ego or agency tests met so as to attribute
5 subsidiary's minimum contacts to parent).

6 Although Seaboard has not proffered substantial evidence supporting the
7 conclusion that Grupo Mexico and ASARCO failed to observe corporate formalities
8 necessary to maintain corporate separateness, it asserts that discovery could yield additional
9 information further establishing the existence of an alter ego relationship between the
10 entities. The Court finds a more satisfactory showing of the facts is necessary in order to
11 determine whether or not an alter ego relationship exists between Grupo Mexico and
12 ASARCO. See Data Disc, Inc., 557 F.2d at 1285 n. 1 ("Discovery may appropriately
13 ordinarily be granted where pertinent facts bearing on the question of jurisdiction are
14 controverted or where a more satisfactory showing of the facts is necessary.").

15 Finally, Grupo Mexico argues that Seaboard "should not need discovery to
16 supports its claim of specific jurisdiction" because "[t]he sole basis" for that theory of
17 jurisdiction "is a one-sentence facsimile," the Letter Agreement signed by Grupo Mexico.
18 (Dkt. 13 at 7.) The Court disagrees with Grupo Mexico that permitting Seaboard to engage
19 in discovery regarding the negotiation of the Letter Agreement will not assist the Court in
20 determining whether Arizona has specific jurisdiction over Grupo Mexico. (*Id.* at 8.)
21 Although Seaboard itself likely knows which of its employees were involved the
22 negotiations leading up to the Letter Agreement, and the substance of those negotiations,
23 it is entitled to discovery concerning the facts involved from the perspective of Grupo
24 Mexico, including the individuals involved, where they were located during the
25 negotiations, and the purpose of the Letter Agreement. Moreover, allowing such discovery
26 will not prejudice Grupo Mexico in this matter.

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1 Because the Court concludes that additional information would be helpful in
2 resolving the issue of personal jurisdiction, it declines to rule on Grupo Mexico's Motion
3 to Dismiss for Lack of Personal Jurisdiction at this time. In addition, the Court finds that
4 it would be unfair to require Grupo Mexico to stand on the Motion to Dismiss currently
5 filed, rather than being provided the opportunity to file a new Motion to Dismiss after
6 jurisdictional discovery has concluded. Therefore, as set forth below, the Court will deny
7 Grupo Mexico's Motion to Dismiss for Lack of Personal Jurisdiction without prejudice and
8 with leave to file a revised or the same motion within 20 calendar days after the conclusion
9 of the ninety day discovery period.

10 Accordingly,

11 **IT IS HEREBY ORDERED GRANTING** Seaboard's Motion for Extension
12 of Time to Respond to Defendant's Motion to Dismiss and Motion to Permit Jurisdictional
13 Discovery (Dkt. 12).

14 **IT IS FURTHER ORDERED** that the parties shall have ninety (90) days
15 from the date of entry of this order, within which to conduct discovery on the issue of
16 personal jurisdiction. The applicable Federal Rules of Civil Procedure and the Local Rules
17 of the District of Arizona will govern the procedures for serving and responding to
18 interrogatories and requests for production, along with the noticing of any depositions. The
19 parties shall, in good faith, conduct discovery on the issue of personal jurisdiction only, in
20 accordance with the theories of jurisdiction discussed in this Order.

21 **IT IS FURTHER ORDERED** that Grupo Mexico's Motion to Dismiss for
22 Lack of Personal Jurisdiction is **DENIED WITHOUT PREJUDICE TO RE-FILING** the
23 same or a revised motion within twenty (20) court days after the conclusion of the ninety
24 (90) day jurisdictional discovery period. (Dkts. 9-10.) If Grupo Mexico elects to re-file the
25 same Motion to Dismiss, it may do so by filing a notice of re-filing with the Court within
26 the twenty day period.

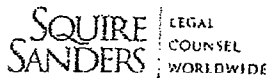
1 IT IS FURTHER ORDERED that, if Grupo Mexico elects to re-file a
2 Motion to Dismiss for Lack of Personal Jurisdiction, the applicable Federal Rules of Civil
3 Procedure and the Local Rules of the District of Arizona will govern the time periods for
4 filing a response and an optional reply.

5 IT IS FURTHER ORDERED that, in the event of a discovery dispute, the
6 parties shall contact the Court to request a telephonic conference prior to filing any
7 discovery motions. The parties shall not contact the Court regarding a discovery dispute
8 unless they have been unable to resolve the dispute themselves, despite personal
9 consultation and sincere efforts to do so. The parties shall not file any written materials
10 related to a discovery dispute or discovery motion without express leave of Court. If
11 the Court does order written submissions, the movant shall include a statement certifying
12 that counsel could not satisfactorily resolve the matter despite personal consultation and
13 sincere efforts to do so, in accordance with LRCiv 7.2(j) of the Rules of Practice of the
14 United States District Court for the District of Arizona.

15 DATED this 12th day of May, 2006.

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18 Stephen M. McNamee
19 United States District Judge
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June 16, 2006

VIA FACSIMILE (612) 766-1600
AND MAIL

Jason A. Greves
Faegre & Benson
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Re: Subpoena *Duces Tecum* to St. Paul Fire & Marine Insurance Co.

Dear Jason:

We are in receipt of your email message of Thursday, June 15, 2006 regarding a subpoena issued to St. Paul Fire & Marine Insurance Company ("St. Paul"). This is the first time you have contacted us in regard to the subpoena. As you know, the subpoena stems from a case in the United States District Court for the District of Arizona styled *Seaboard Surety Co. v. Grupo México, S.A. de C.V.*, Case No. CV06-0134-PHX-SMM (the "Arizona litigation"). The subpoena was served on June 5, 2006 and your response is due on June 19, 2006 at 10:00 a.m. Now, ten days after receiving the subpoena, you demand that the subpoena be withdrawn and threaten to move to quash if we do not respond to your email in less than twenty-four hours. To add insult to injury, your objections to the subpoena are groundless and your email concedes that at least some of the discovery sought is appropriate.

You contend, without citation to any legal authority that because St. Paul is the parent corporation of Seaboard Surety Company ("Seaboard") St. Paul is also a "party" to the Arizona litigation and therefore is only subject to document discovery through Federal Rule of Civil Procedure ("FRCP") 34. This utterly amazing contention would mean that every lawsuit in which, for example, Saab Automobile AB (a wholly owned subsidiary of General Motors) was a party. General Motors would also be a party. Such an interpretation would seem to fly in the face of the black letter law that each corporation is a separate and distinct entity.

The fact is, just as Saab and GM are separate corporate entities with separate corporate existences, so too are St. Paul and Seaboard separate and distinct corporate entities. St. Paul is not a party to the Arizona litigation because it is not named in the caption -- a choice that its subsidiary Seaboard made.

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EXHIBIT I

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Rule 34(c), FRCP, specifically states that "A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45." That is exactly what Grupo México has done here. Moreover, your understanding of FRCP 34 would expressly violate the long-held understanding that discovery under FRCP 34 is limited to parties and is not a permissible means of seeking discovery from a non-party. See *Hickman v. Taylor*, 329 U.S. 495, 504 (1947) (discovery under Rule 34 is limited to parties to the action). If you have any case law to support your contention we will certainly consider it, but our own research finds none.

Your next contention that the subpoena should be quashed because it is overbroad is equally without merit. As you are aware, the thrust of Seaboard's claim in the Arizona Litigation is that Grupo México, S.A. de C.V., a Mexican corporation, is subject to jurisdiction in Arizona on the basis of specific jurisdiction and is subject general jurisdiction on the theory that Grupo México is the alter ego of ASARCO LLC ("ASARCO"). [P. Mot. for Extension of Time to Respond to D. Mot. to Dismiss and Mot. to Permit Jurisdictional Discovery at 3-5 ("P. Mot.") (attached hereto as Ex. A).] Seaboard contends that specific jurisdiction is present based on the Letter Agreement, which relates to Grupo México's agreement to indemnify St. Paul for three reclamation bonds issued on behalf of ASARCO. [*Id.* at 4-5.] As such, Grupo México seeks to discover information related to the Letter Agreement. Moreover, because the Letter Agreement named St. Paul, it is appropriate for Grupo México to seek documents related thereto from St. Paul directly.

Seaboard contends that Grupo México is subject to general jurisdiction on the theory that Grupo México is ASARCO's alter ego. [*Id.*] Seaboard contends that it has been required to set aside funds for payment of the Reclamation Bonds due in part to an Arizona lawsuit, long ago dismissed, styled *San Xavier Allottees Assoc., et al. v. Seaboard Surety Co., et al.* [Amend. Compl. ¶¶ 28, 29.] Seaboard contends that because it had to set aside such funds and defend the suit, ASARCO is liable to pay such funds to St. Paul pursuant to a General Agreement of Indemnity (GAI) signed by ASARCO. [Amend. Compl. ¶¶ 36-41.] Seaboard contends that St. Paul has made demands on Grupo México for payment pursuant to the Reclamation Bonds and the GAI. [*Id.* ¶¶ 33, 40.] Therefore, Grupo México is entitled to discover documents and communications related to the Reclamation Bonds and the GAI based upon which Grupo México is purportedly liable to St. Paul. Such documents may shed light on how St. Paul understood the relationship between Grupo México and ASARCO including how St. Paul corresponded with Grupo México and ASARCO, to where such correspondence was directed, and to whom.

Seaboard further contends that Grupo México's failure to make payment to St. Paul pursuant to the Letter Agreement, the Reclamation Bonds, and the GAI, has "caused economic consequences in Arizona" and thereby subjects Grupo México to jurisdiction in Arizona. [P. Mot. at 4-5.] As such, the alleged breach of those agreements by Grupo México purportedly gave rise to specific jurisdiction over Grupo México in Arizona. Grupo México has a right to discover the content of the documents and communications related to the Reclamation Bonds and the GAI as they may support or negate Seaboard's claims of resultant economic consequences in Arizona caused by Grupo México. Moreover, because the purported economic consequence is Grupo México's failure to make payment to St. Paul, it is appropriate for Grupo México to seek such documents directly from St. Paul to learn how and where such purported economic consequences were actually felt by St. Paul.

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The subpoena seeks five different categories of documents all of which relate to the jurisdictional discovery ordered in the Arizona litigation. [See Order dated May, 12, 2006 ("Order") (attached hereto as Ex. B).] There is no question that each relates specifically to Seaboard's allegations that Grupo México is subject to jurisdiction in Arizona. Indeed, in your email you state that "we would concede that Request Number 1 falls within the order of the Court." Request number one seeks:

All Documents and Correspondence concerning the attached letter agreement (the "Letter Agreement") [attached hereto as Ex. 1] executed by Grupo México on or about February 16, 2001 addressed to St. Paul in New York via facsimile including, but not limited to, any document referring to, discussing, or describing the Letter Agreement.

You quite correctly understand that because the Letter Agreement is one of the bases under which Seaboard contends that Grupo México is subject to jurisdiction, the request for documents related to the Letter Agreement is proper. Thus, we understand that you have no dispute with producing documents responsive to Request Number 1.

Request Number 2 reads:

All documents and Correspondence concerning any negotiations surrounding the Letter Agreement described in request number one above including, but not limited to, internal or external correspondence, date books or calendars referring to contacts with Grupo México, and telephone logs or records referring to contacts with Grupo México.

The requested documents relate specifically to the negotiations for the Letter Agreement. You have acknowledged that documents related to the Letter Agreement must be produced and we fail to see how documents related to the negotiations that resulted in the Letter Agreement are not equally relevant. Indeed, the Court specifically disagreed with Grupo México's contention that discovery related to the negotiation of the Letter Agreement was unnecessary. In its Order granting jurisdictional discovery the Court wrote, "The Court disagrees with Grupo México that permitting Seaboard to engage in discovery regarding the negotiations of the Letter Agreement will not assist the Court in determining whether Arizona has specific jurisdiction over Grupo México." [Order at 8.] As such, the Court has clearly expressed its understanding that discovery related to the negotiation of the Letter Agreement is relevant to the issue of jurisdiction.

Request Number 3 reads:

All Documents and Correspondence concerning the three "Reclamation Bonds" [attached hereto as Ex. 2], issued in or about February 2001 by St. Paul Surety with ASARCO as principal and with the United States Department of Interior as obligee and described as bonds No. 420688 in the amount of \$7 million, No. 420669 in the amount of \$760,000, and No. 420670 in the amount of \$3.5 million, including, but not limited to, correspondence with Grupo México or ASARCO, correspondence with third parties, and memoranda or internal notes or files concerning Grupo México or ASARCO.

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This request specifically seeks documents related to the Reclamation Bonds in support of which the Letter Agreement was executed. Again, if documents concerning the Letter Agreement are admittedly subject to disclosure, so too must the documents related to the very bonds that were the subject of the Letter Agreement. Moreover, Seaboard has contended that Grupo México and ASARCO are alter egos. Documents related to the Reclamation Bonds will likely shed light on St. Paul's understanding of the relationship between Grupo México and ASARCO and may indeed contain admissions that St. Paul understood the two corporations were separate and distinct. How St. Paul communicated with Grupo México and ASARCO, through whom, and to where such communications were directed may shed light on St. Paul's awareness and indeed its observance of the corporate separateness of the two entities.

Request Number 4 reads:

All Documents and Correspondence concerning a General Agreement of Indemnity [attached hereto as Ex. 3], executed by ASARCO on or about October 19, 1993 in favor of "Seaboard Surety Company and/or St. Paul Fire and Marine Insurance Company and/or St. Paul Guardian Insurance Company and/or St. Paul Mercury Insurance Company," including, but not limited to, correspondence with Grupo México or ASARCO, correspondence with third parties, and memoranda or internal notes or files concerning Grupo México or ASARCO.

This request specially seeks documents related to the GAI which Seaboard contends ASARCO has breached and under which Grupo México is liable to St. Paul on an alter ego theory. Here again, documents relating to the GAI may well show that St. Paul understood that ASARCO and Grupo México were distinct corporate entities. Because St. Paul was a party to the GAI, directing this request to St. Paul is reasonable and appropriate.

Finally, Request Number 5 reads:

All Documents and Correspondence you have had with the Secretary of the Interior, the Bureau of Land Management, the U.S. Department of the Interior, Bureau of Indian Affairs, or the San Xavier Allottees Association concerning Grupo México or ASARCO.

This request, like all the others, is limited to documents dating from January 1, 2000 to the present. Moreover, the request is limited to documents and correspondence related to Grupo México and ASARCO. Seaboard's contention in this litigation that ASARCO and Grupo México are alter egos may in fact prove to be inconsistent with St. Paul's communications to other parties directly related to Seaboard's claims. For example, the San Xavier Allottees Association (the "Allottees") brought the lawsuit against Seaboard and the Secretary of the Interior (the "Secretary") which Seaboard contends forced it to set aside funds pursuant to the Reclamation Bonds. Any communications St. Paul may have had with the Allottees or the Secretary, particularly the discussions that lead to the dismissal of the case, may contain admissions regarding St. Paul's understanding of the relationship between Grupo México and ASARCO. The Bureau of Indian Affairs (the "Bureau") is the obligee for the Reclamation Bonds so, any communications between St. Paul and the Bureau may show St. Paul's understanding of the relationship between Grupo México and ASARCO, for example, whether St. Paul or the Bureau ever

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discussed who was liable for payment of the bonds. In sum, any correspondence St. Paul may have had with these entities related to Grupo México or ASARCO is likely to contain admissions of St. Paul regarding its understanding of the relationship between Grupo México and ASARCO.

Grupo México's subpoena to St. Paul is proper and valid and is one with which St. Paul must timely comply. Grupo México has permitted St. Paul fourteen days to comply with the subpoena and your email expresses no contention that the time frame is unreasonable. The Arizona Court has given the parties only 90 days in which to conduct jurisdictional discovery and nearly 30 days of that time period have already passed. There is simply no time for delay. Grupo México is entitled to the requested documents and indeed such documents are vital to Grupo México's ability to defend against Seaboard's contention that Grupo México is subject to jurisdiction in Arizona. As such, we expect St. Paul to comply with its obligations and timely produce documents on Monday, June 19, 2006.

Very truly yours,



Brian D. Kaiser

Attachments:

- Ex. A – Plaintiff's Motion for Extension of Time to
Respond to Defendant's Motion to Dismiss
and Motion to Permit Jurisdictional Discovery
- Ex. B – Order dated May 12, 2006

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June 20, 2006

VIA FACSIMILE (612) 766-1600
AND MAIL

Jason Greves, Esq.
Faegre & Benson
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901

Re: Seaboard Surety Co. v. Grupo México, S.A. de C.V.
Arizona District Court Case No. CIV-06-0134-PHX-SMM
Subpoena *Duces Tecum* to St. Paul Fire & Marine Insurance Co.

Dear Jason:

We are in receipt of your Friday night facsimile regarding the above referenced Subpoena served upon your client on June 5, 2006. Your objection to the Subpoena as "overly broad, vague and unnecessarily burdensome for failing to allow a reasonable time for compliance" is unavailing. Your letter offers absolutely no explanation of what you believe to be overly broad or vague about the subpoena. Moreover, our letter to you of June 16, 2006 offered a detailed explanation of exactly why each of the five categories of documents requested is relevant and within the permissible scope of discovery. Your letter fails to respond in any fashion to our explanations or to detail an objection of any specificity toward any particular category of documents. Indeed you offer only that counsel for Seaboard Surety Co. ("Seaboard") "advises use that the requests . . . are beyond the scope of discovery." This gives us absolutely no means of resolving any disagreement that may exist between us as to the breadth of the requests or as to your purported concerns about the vagueness of the requests.

The fourteen day deadline in the subpoena is necessitated by the limited 90-day discovery ordered by the Arizona Court. As of today we are 39 days into that discovery period. We simply do not have the luxury of time for lengthy extensions in this matter. As your letter points out, we expect discovery responses from Seaboard on July 3, 2006. As such, it is imperative that we get discovery responses from St. Paul in advance of that date in order to permit us to efficiently review St. Paul's documents before turning to those produced by Seaboard, all while still leaving time to conduct depositions before the 90-day time limit on discovery expires.

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Your proposal to produce documents on July 3, 2006 "within the scope of the Subpoena and within the scope of the Court Order" is unacceptable because you seek both a two week extension and the right to later object to producing documents that in your estimation are not within the scope of the Court Order. To the extent that you have concerns about the scope of the documents requested in the Subpoena, concerns that you have yet to articulate to us, we think it best that we involve the Court. We have corresponded back and forth for four days now and you have yet to offer any substantive explanation for your claims regarding over breadth and we see no alternative but to seek the assistance of the Court.

With regard to your request for more time, we are willing to meet you half way. We will agree to grant St. Paul a four-day extension to respond to the Subpoena from June 19, 2006 at 10 a.m. to June 23, 2006 at 10 a.m., provided that St. Paul agrees that it will produce all documents in its possession, custody or control that are responsive to each of the five categories of documents requested in the Subpoena and that St. Paul will not attempt to interpose objections to the document requests with the exception of documents legitimately subject to attorney/client or work-product privileges. This offer will remain open until noon on June 21, 2006. If you choose not to accept this extension we will have no choice but to move to compel.

Very truly yours,



Brian D. Kaiser

BDK/mcr

cc: Wayne S. Moskowitz, Esq.
Kara A. Ricupero, Esq.

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**SQUIRE
SANDERS**

LEGAL
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June 20, 2006

PLEASE DELIVER THESE PAGES IMMEDIATELY

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TO: Jason A. Greves

FAX NO.: 612.766.1600

COMPANY: Faegre & Benson

PHONE NO.: 612.766.7000

FROM: Brian D. Kaiser

DIRECT DIAL NO.: +1.602.528.4090

E-MAIL: bkaiser@ssd.com

RE: Subpoena *Duces Tecum* to St. Paul Fire & Marine Insurance Co.

Message:

CONFIDENTIALITY NOTICE:

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Maria C. Rivera

Job No:

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